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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,026	03/15/2004	John Edgar Curry	043514.005	1015
25461 7590 05/03/2007 SMITH, GAMBRELL & RUSSELL SUITE 3100, PROMENADE II 1230 PEACHTREE STREET, N.E. ATLANTA, GA 30309-3592			EXAMINER SANDERS, JANIS C	
			ART UNIT 1732	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/801,026	Applicant(s) CURRY ET AL.	
	Examiner Janis Sanders	Art Unit 1732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 1-10 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-19 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>7/20/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Restriction election

1. Restriction to one of the following inventions is required under 35 U.S.C.

121:

- I. Claims 1-10, drawn to the assembly, classified in class 220, subclass 3.4.
- II. Claims 11-19, drawn to the method, classified in class 264, subclass 37.19.

The inventions are distinct, each from the other because of the following reasons:

Inventions a waste concrete receptacle and method of forming riprap are related as apparatus and product made. The inventions in this relationship are distinct if either or both of the following can be shown: (1) that the apparatus as claimed is not an obvious apparatus for making the product and the apparatus can be used for making a materially different product or (2) that the product as claimed can be made by another and materially different apparatus (MPEP § 806.05(g)). In this case the apparatus as claimed can be used to make another and materially different product such as: said waste receptacle can be used to mold metal alloy blocks instead of concrete.

Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

During a telephone conversation with Attorney Christopher Holland on the 23 February 2007 a provisional election was made without traverse to prosecute the invention of the method, claims 11-19. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-10 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Specification

2. The disclosure is objected to because of the following informalities: Figure 1b is not included in the brief description of the drawings. The following informality has been noted and requires correction in response to this Office Action. Since figures must be numbered separately, i.e. "Figure 1A," "Figure 1B," etc., Applicant is required to amend the Brief Description of the Drawings in Applicant's disclosure accordingly to reflect the proper figure designations which are in formal drawings when drawings are submitted. Figure 1b is not included in the brief description of the drawings.

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Appropriate correction is required.

Information Disclosure Statement

3. An initialed and dated copy of Applicant's IDS form 1449 filed 7/20/2004, is attached to the instant Office action.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 15-16 and 18-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Welton.

As required in **claim 15**, Welton (US 2001/0000640) teaches a waste container for the disposition of waste concrete comprising a bottom floor section, front and rear lateral dimensions, and a forward end closed by a forward transverse wall section. Opposed side walls extend longitudinally of the container and upwardly from the bottom floor section to define with the bottom floor section a receptacle for waste concrete (abstract). It will usually be

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desirable to coat the interior surfaces of the container, particularly the floor section and the sidewalls with an oliophilic release agent in order to avoid a tight bond between the concrete as it sets up and the surrounding container surfaces [0034]. The reconfiguration system is effective to compress the lateral dimension of the side walls relative to one another from the first somewhat greater lateral dimension to the second reduced lateral dimension when a plastic mass, such as unset concrete or the like, is added to the container [0006]. By compressing the sidewalls inwardly toward one another, the plastic concrete is allowed to set with the sidewalls in the compressed inward relationship [0007]. The roll-off truck lifting mechanism is configured to tilt the front end of the container upwardly through a significant angle, preferably an angle of at least 45 degrees from the horizon, in order to facilitate removal of hardened concrete from the container in a manner described below [0023].

Claim 16 requires angling said first partition toward said second partition. Welton teaches the side walls are flared from front to back from a front internal width. This provides a composite angle of flare of the sidewall sections [0024].

As required by **claims 18 and 19**, Welton teaches the roll-off truck lifting mechanism is configured to tilt the front end of the container upwardly through a significant angle [0023]. Figure 2 illustrates the elevation through the lifting mechanism, which extend from the lifting mechanism base on the chassis up to the bridle section of the container [0023].

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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7. Claims 11-13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boutellier in view of Welton.

As required by **claim 11**, Boutellier (US 4,735,562) teaches an apparatus and method for making a plurality of formed concrete products. Figure 8 illustrates a grounded frame consisting of side edges, front edge, and back edge, and having a top surface which, in the embodiment illustrated in FIG. 1, also serves as the bottom of mold cavities. Mold cavities are formed as integral components of platform by inserting and securing sidewalls to extend longitudinally between side edges. This enables one to use the apparatus for casting a variety of formed concrete products (col. 3, lines 54-66). The hydraulic lift system lifts and inverts the mold tray and cured concrete products for easy removal (abstract).

Boutellier teaches of an apparatus and method for making formed concrete products. However, the reference does not teach of applying a lubricant to cells (of molding frame). The reference further does not teach of using waste concrete to distribute and cure in said cell.

Welton (US 2001/0000640) teaches of a waste container for the disposition of waste concrete. Although not necessary, it will usually be desirable to coat the interior surfaces of the container, particularly the floor section and the sidewalls with an oliophilic release agent in order to avoid a tight bond between the concrete as it sets up and the surrounding container surfaces [0034]. Thus,

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rather than disposing of the plastic concrete by pouring it on the ground and then breaking it into particulate form, the concrete is poured into a transferable container and allowed to set in a unitary mass which is transported to a suitable disposal site [0017].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method of Boutellier to include lubrication of frame cells and the use of waste concrete as taught by Welton. One of ordinary skill would have been motivated to do so because the lubrication would allow for easier concrete block removal from frame. Also to provide an apparatus for making a plurality of pre-cast concrete products in mold trays of various types (Boutellier: col. 1, lines 65-67) in a movable apparatus to enable the production of concrete products to be carried out either indoors or outdoors or actually on the job site (Boutellier: col. 2, lines 23-26). Such a device would provide useful to the recycling of waste concrete for riprap and/or other purposes. Because all references are concerned with setting and curing of wet concrete, one would have a reasonable expectation of success from the combination.

As required by **claim 12**, Welton teaches a container for dumping material is characterized as being "double-tapered" to facilitate dislodgement of the contents from the trailer. The container is tapered upwardly in the sidewall configuration so that the sidewalls slope upwardly and outwardly and are taller near the front end of the container than at the rear end. The cross-sectional area of the trailer defines a equilateral trapezoid, which has a vertical height

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somewhat greater than the transverse dimension of the bottom floor section [0004].

Claim 13 requires the step of allowing the waste concrete to cure for a period of at least eight hours. Welton (US 2001/0000640) teaches the addition of a mass of concrete into the interior of the container, then allowing the concrete to set [0007]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the instantly claimed ranges through process optimization, since it has been held that when the general condition of a claim is disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

As required by **claims 14**, Boutellier teaches after the concrete has cured, mold tray is placed, making sure that side pins are firmly situated in brackets on lift arms. The mold tray is raised to its elevated position and rotated 180 degrees(col. 6, line 36-40).

8. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Welton.

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Claim 17 requires the step of allowing the waste concrete to cure for a period of at least eight hours. Welton (US 2001/0000640) teaches the addition of a mass of concrete into the interior of the container, then allowing the concrete to set [0007]. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose the instantly claimed ranges through process optimization, since it has been held that when the general condition of a claim is disclosed in the prior art, discovering the optimal or workable ranges involves only routine skill in the art. See *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Remarks

9. No claim is allowed.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Jantzen (US 4,781,875), Benart et al. (2,827,683), Gantz-Bloome (US 5,772,063), Richter et al (US 6,244,785), and Welton (US 6,413,036) disclose methods of concrete curing and assemblies.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Janis Sanders whose telephone number is 571-272-7145. The examiner can normally be reached on M-Th and alternating Fridays 7:30-5pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Janis Sanders
Patent Examiner
Art Unit 1732

4/19/07


CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER

4/30/07